

1 **AMENDMENTS TO THE DIVISION OF CONSUMER**
2 **PROTECTION**

3 2022 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: James A. Dunnigan**

6 Senate Sponsor: Wayne A. Harper

8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Health Spa Act.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ amends provisions of the Health Spa Act regarding:
 - 15 • a contract for a health spa service;
 - 16 • the assignment of a contract for a health spa service;
 - 17 • a change in a consumer's primary location; and
 - 18 • an exemption from bond, letter of credit, or certificate of deposit requirement;

19 and

- 20 ▶ makes technical and conforming changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **13-23-2**, as last amended by Laws of Utah 2021, Chapter 266

28 **13-23-3**, as last amended by Laws of Utah 2021, First Special Session, Chapter 9

29 **13-23-5**, as last amended by Laws of Utah 2021, Chapter 266

30 **13-23-6**, as last amended by Laws of Utah 2021, First Special Session, Chapter 9
 31 **13-23-8**, as enacted by Laws of Utah 2017, Chapter 98
 32 **63I-2-213**, as last amended by Laws of Utah 2021, First Special Session, Chapter 9



34 *Be it enacted by the Legislature of the state of Utah:*

35 Section 1. Section **13-23-2** is amended to read:

36 **13-23-2. Definitions.**

37 As used in this chapter:

38 (1) "Business enterprise" means a sole proprietorship, partnership, association, joint
 39 venture, corporation, limited liability company, or other entity used in carrying on a business.

40 (2) "Consumer" means a purchaser of health spa services for consideration.

41 ~~[(3) "Consumer's primary location" means the health spa facility that a health spa
 42 designates in a contract for health spa services as the health spa facility the consumer will
 43 primarily use for health spa services.]~~

44 ~~[(4)]~~ (3) "Division" means the Division of Consumer Protection.

45 ~~[(5)]~~ (4) (a) "Health spa" means a business enterprise that provides access to a facility:

46 (i) for a charge or a fee; and

47 (ii) for the development or preservation of physical fitness or well-being, through
 48 exercise, weight control, or athletics.

49 (b) "Health spa" does not include:

50 (i) a licensed physician who operates a facility at which the physician engages in the
 51 practice of medicine;

52 (ii) a hospital, intermediate care facility, or skilled nursing care facility;

53 (iii) a public or private school, college, or university;

54 (iv) the state or a political subdivision of the state;

55 (v) the United States or a political subdivision of the United States;

56 (vi) a person offering instruction if the person does not:

57 (A) utilize an employee or independent contractor; or

- 58 (B) grant a consumer the use of a facility containing exercise equipment;
- 59 (vii) a business enterprise, the primary operation of which is to teach self-defense or a
60 martial art, including kickboxing, judo, or karate;
- 61 (viii) a business enterprise, the primary operation of which is to teach or allow an
62 individual to develop a specific skill rather than develop or preserve physical fitness, including
63 gymnastics, tennis, rock climbing, or a winter sport;
- 64 (ix) a business enterprise, the primary operation of which is to teach or allow an
65 individual to practice yoga or Pilates;
- 66 (x) a private employer who owns and operates a facility exclusively for the benefit of
67 the employer's employees, retirees, or family members, if the operation of the facility:
68 (A) is only incidental to the overall function and purpose of the employer's business;
69 and
70 (B) is offered on a nonprofit basis;
- 71 (xi) an individual providing professional services within the scope of the individual's
72 license with the Division of Occupational and Professional Licensing;
- 73 (xii) a country club;
- 74 (xiii) a nonprofit religious, ethnic, or community organization;
- 75 (xiv) a residential weight reduction center;
- 76 (xv) a business enterprise that only offers virtual services;
- 77 (xvi) a business enterprise that only offers a credit for a service that a separate business
78 enterprise offers;
- 79 (xvii) the owner of a lodging establishment, as defined in Section [29-2-102](#), if the
80 owner only provides access to the lodging establishment's facility to:
81 (A) a guest, as defined in Section [29-2-102](#); or
82 (B) an operator or employee of the lodging establishment;
- 83 (xviii) an association, declarant, owner, lessor, or developer of a residential housing
84 complex, planned community, or development, if at least 80% of the individuals accessing the
85 facility reside in the housing complex, planned community, or development; or

86 (xix) a person offering a personal training service exclusively as an employee or
87 independent contractor of a health spa.

88 [~~(6)~~] (5) "Health spa facility" means a facility to which a business entity provides
89 access:

90 (a) for a charge or a fee; and

91 (b) for the development or preservation of physical fitness or well-being, through
92 exercise, weight control, or athletics.

93 [~~(7)~~] (6) (a) "Health spa service" means instruction, a service, a privilege, or a right that
94 a health spa offers for sale.

95 (b) "Health spa service" includes a personal training service.

96 [~~(8)~~] (7) "Personal training service" means the personalized instruction, training,
97 supervision, or monitoring of an individual's physical fitness or well-being, through exercise,
98 weight control, or athletics.

99 (8) "Primary location" means the health spa facility that a health spa designates in a
100 contract for health spa services as the health spa facility the consumer in the contract will
101 primarily use for health spa services.

102 Section 2. Section **13-23-3** is amended to read:

103 **13-23-3. Contracts for health spa services.**

104 (1) (a) A contract for the purchase of a health spa service shall be in writing.

105 (b) The written contract described in Subsection (1)(a) shall constitute the entire
106 agreement between the consumer and the health spa.

107 (2) (a) The health spa shall provide the consumer with a fully completed copy of the
108 contract required by Subsection (1):

109 (i) at the time of the contract's execution; and

110 (ii) at any time, upon the consumer's request.

111 (b) The copy described in Subsection (2)(a) shall show:

112 (i) the date of the transaction;

113 (ii) the name and address of the health spa;

114 (iii) the name, address, and telephone number of the consumer; and

115 (iv) the consumer's primary location.

116 (3) (a) A contract described in Subsection (1):

117 (i) may not have a term in excess of 36 months; and

118 (ii) subject to Subsection (3)(b), may include an automatic renewal provision.

119 (b) An automatic renewal provision described in Subsection (3)(a) is effective if notice

120 of the automatic renewal provision is provided to the consumer no sooner than 60 days before,

121 and no later than 30 days before, the day on which the contract automatically renews.

122 (c) Except for a lifetime membership sold before May 1, 1995, a health spa may not

123 offer a lifetime membership.

124 (4) A contract described in Subsection (1) or an attachment to the contract shall clearly

125 state each rule of the health spa that applies to:

126 (a) the consumer's use of the health spa's facilities and services; and

127 (b) cancellation and refund policies of the health spa.

128 (5) A contract described in Subsection (1) shall specify which equipment or facility of

129 the health spa:

130 (a) is omitted from the contract's coverage; or

131 (b) may be changed at the health spa's discretion.

132 (6) A contract described in Subsection (1) shall clearly:

133 (a) state the consumer's rescission rights under Section 13-23-4; and

134 (b) provide an email address and a mailing address where the consumer can send the

135 health spa a notice of intent to rescind the contract.

136 (7) (a) If a consumer and a health spa enter into a contract described in Subsection (1)

137 before May 4, 2022, the health spa may:

138 (i) assign the contract to another health spa that requires the consumer to obtain a

139 contracted health spa service at a health spa facility within five driving miles from the

140 consumer's initial primary location; or

141 (ii) change the consumer's primary location to a health spa facility within five driving

142 miles from the consumer's initial primary location.

143 (b) If a consumer and a health spa enter into a contract described in Subsection (1) on
144 or after May 4, 2022, the health spa may not:

145 (i) assign the contract to another health spa that requires the consumer to obtain a
146 contracted health spa service at a health spa facility within five driving miles from the
147 consumer's initial primary location, unless the health spa that enters into the contract includes
148 in the contract a disclaimer that:

149 (A) is in at least 12-point, bold type on the first page of the contract; and

150 (B) states that the health spa may assign the contract to another health spa requiring the
151 consumer to obtain a contracted health spa service at another facility within five driving miles
152 from the consumer's initial primary location; or

153 (ii) change the consumer's primary location to a health spa facility within five driving
154 miles from the consumer's initial primary location, unless the health spa includes in the
155 contract a disclaimer that:

156 (A) is in at least 12-point, bold type on the first page of the contract; and

157 (B) states that the health spa may change the consumer's primary location to a health
158 spa facility within five driving miles from the consumer's initial primary location.

159 ~~[(7)]~~ (8) (a) Except as permitted under Subsection ~~[(7)]~~ (8)(b), a health spa may not
160 assign a contract for a health spa service to a health spa that requires the consumer to obtain a
161 contracted health spa service at a health spa facility farther than five driving miles from the
162 consumer's initial primary location, unless the health spa:

163 (i) provides the consumer the option to cancel the contract; and

164 (ii) receives approval from the consumer to assign the contract.

165 (b) A health spa may assign a consumer's contract for a health spa service without
166 complying with Subsection ~~[(7)]~~ (8)(a), if:

167 (i) during the 60-day period immediately before the day on which the health spa
168 assigns the consumer's contract, the consumer uses a health spa facility operated by the
169 assignee more frequently than the consumer's primary location;

170 (ii) the assignee changes the consumer's primary location to the health spa facility
171 described in Subsection ~~[(7)]~~ (8)(b)(i); and

172 (iii) the health spa has a reciprocity agreement with the assignee.

173 ~~[(8)]~~ (9) (a) Except as permitted under Subsection ~~[(8)]~~ (9)(b), before a health spa
174 changes a consumer's primary location to a health spa facility farther than five driving miles
175 from the consumer's initial primary location, the health spa shall provide the consumer the
176 option to:

177 (i) cancel the contract for a health spa service; or

178 (ii) (A) continue the contract at the new health spa facility; and

179 (B) designate the new health spa facility as the consumer's primary location.

180 (b) A health spa may change a consumer's primary location without providing the
181 consumer the option described in Subsection ~~[(8)]~~ (9)(a), if:

182 (i) during the 60-day period immediately before the day on which the health spa
183 changes the consumer's primary location, the consumer uses a health spa facility other than the
184 consumer's primary location more frequently than the consumer's primary location; and

185 (ii) the health spa changes the consumer's primary location to the health spa facility
186 described in Subsection ~~[(8)]~~ (9)(b)(i).

187 ~~[(9)]~~ (10) The provisions of this section apply regardless of when the execution of a
188 contract described in Subsection (1)(a) occurs.

189 Section 3. Section **13-23-5** is amended to read:

190 **13-23-5. Registration -- Bond, letter of credit, or certificate of deposit required --**

191 **Penalties.**

192 (1) (a) (i) A health spa may not operate a health spa facility in this state unless the
193 health spa registers the health spa facility with the division in accordance with this section.

194 (ii) Registration of a health spa facility under this chapter is effective for one year.

195 (iii) To renew a health spa facility registration under this section, the health spa shall
196 submit a registration renewal application to the division at least 30 days before the day on
197 which the health spa facility's registration expires.

198 (iv) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
199 the division may establish:

200 (A) the initial health spa facility registration process, including the content of any
201 forms;

202 (B) the health spa facility registration renewal process, including the content of any
203 forms; and

204 (C) a surety exemption process, including the content of any forms.

205 (b) Each health spa registering a health spa facility in this state shall designate a
206 registered agent for receiving service of process.

207 (c) A health spa's registered agent shall be reasonably available from 8 a.m. until 5 p.m.
208 during normal working days.

209 (d) The division shall charge and collect a fee for registration and registration renewal
210 under guidelines provided in Section [63J-1-504](#).

211 (e) If a health spa fails to submit a complete registration renewal application before the
212 day on which a health spa facility's registration expires, the health spa shall pay a fee of \$25 for
213 each month or part of a month that passes:

214 (i) after the day on which the registration expires; and

215 (ii) before the day on which the health spa submits a complete registration renewal
216 application.

217 (f) The fee described in Subsection (1)(e) is in addition to the registration renewal fee
218 described in Subsection (1)(d).

219 (g) A health spa registering or renewing a registration shall provide the division a copy
220 of the liability insurance policy that:

221 (i) covers the health spa; and

222 (ii) is in effect at the time of the registration or registration renewal.

223 (h) If information in an application to register or renew the registration of a health spa
224 facility materially changes or becomes incorrect or incomplete, the applicant shall, within 30
225 days after the day on which the information changes or becomes incorrect or incomplete,

226 correct the application or submit the correct information to the division in a manner that the
227 division establishes by rule made in accordance with Title 63G, Chapter 3, Utah
228 Administrative Rulemaking Act.

229 (2) (a) Except as provided in Section 13-23-6, for each health spa facility a health spa
230 operates, the health spa shall obtain and maintain:

231 (i) a performance bond issued by a surety authorized to transact surety business in this
232 state;

233 (ii) an irrevocable letter of credit issued by a financial institution authorized to do
234 business in this state; or

235 (iii) a certificate of deposit.

236 (b) The bond, letter of credit, or certificate of deposit described in Subsection (2)(a)
237 shall be payable to the division for the benefit of a consumer who incurs damages as the result
238 of the health spa:

239 (i) violating this chapter; or

240 (ii) going out of business.

241 (c) (i) After each consumer has fully recovered damages, the division may recover
242 from the bond, letter of credit, or certificate of deposit described in Subsection (2)(a) the costs
243 of collecting and distributing funds under this section, in an amount up to 10% of the face
244 value of the bond, letter of credit, or certificate of deposit.

245 (ii) The total liability of the issuer of the bond, letter of credit, or certificate of deposit
246 described in this Subsection (2) may not exceed the amount of the bond, letter of credit, or
247 certificate of deposit.

248 (iii) A health spa shall maintain a bond, letter of credit, or certificate of deposit
249 described in this Subsection (2) in force for one year after the day on which the health spa
250 notifies the division in writing that the health spa has ceased all activities regulated under this
251 chapter at the health spa facility.

252 (d) (i) The division may impose a fine against a health spa that fails to comply with the
253 requirements of this Subsection (2) of up to \$100 per day that the health spa remains out of

254 compliance.

255 (ii) The division shall deposit each fine the division collects under this Subsection
256 (2)(d) into the Consumer Protection Education and Training Fund created in Section 13-2-8.

257 (3) (a) In accordance with the schedule established in Subsection (3)(b), a health spa
258 shall base the minimum principal amount of the bond, letter of credit, or certificate of deposit
259 required under Subsection (2) on:

260 (i) the number of unexpired contracts for a health spa service, at the time the health spa
261 submits the health spa facility registration or registration renewal application, that designate the
262 health spa facility as the consumer's primary location; or

263 (ii) if at the time the health spa submits the health spa facility registration application
264 the health spa has not executed a contract for a health spa service that designates the health spa
265 facility as a consumer's primary location, the number of contracts for a health spa service
266 designating the health spa facility as a consumer's primary location that the health spa
267 reasonably expects to execute during the health spa facility's first year of registration.

268 (b)

	Principal Amount of	Number of Contracts
269	Bond, Letter of Credit, or Certificate of Deposit	
270	\$5,000	100 or fewer
271	\$10,000	101 to 250
272	\$15,000	251 to 500
273	35,000	501 to 1,500
274	50,000	1,501 to 3,000
275	75,000	3,001 or more

276 (c) A health spa [~~that is not exempt under Section 13-23-6~~] shall comply with
277 Subsections (3)(a) and (b) with respect to all of the health spa's unexpired contracts for a health
278 spa service[~~, regardless of whether a portion of those contracts satisfies~~] that do not satisfy the

279 criteria in Section 13-23-6.

280 (4) A health spa shall furnish a copy of the current bond, letter of credit, or certificate
281 of deposit to the division before selling, offering or attempting to sell, soliciting the sale of, or
282 becoming a party to any contract to provide a health spa service.

283 (5) A health spa shall:

284 (a) maintain accurate records of:

285 (i) the bond, letter of credit, or certificate of deposit; and

286 (ii) of each payment made, due, or to become due to the issuer; and

287 (b) open the records described in Subsection (5)(a) to inspection by the division at any
288 time during normal business hours.

289 (6) (a) A health spa with a health spa facility registered under this section shall submit
290 a new initial registration for the health spa facility, if the health spa:

291 (i) changes ownership;

292 (ii) permanently ceases and then again commences operation at the health spa facility;

293 or

294 (iii) relocates the health spa facility.

295 (b) The former owner of a health spa may not release, cancel, or terminate the owner's
296 liability under any bond, letter of credit, or certificate of deposit previously filed with the
297 division, unless:

298 (i) the new owner has filed a new bond, letter of credit, or certificate of deposit for the
299 benefit of consumers covered under the previous owner's bond, letter of credit, or certificate of
300 deposit; or

301 (ii) the former owner has refunded all unearned payments to consumers.

302 (7) If a health spa permanently ceases operation or relocates a health spa facility, the
303 health spa shall provide the division notice at least 45 days before the day on which health spa
304 permanently ceases operation or relocates the health spa facility.

305 Section 4. Section 13-23-6 is amended to read:

306 **13-23-6. Exemptions from bond, letter of credit, or certificate of deposit**

307 **requirement.**

308 (1) A health spa is exempt from Subsections 13-23-5(2) through (5) for a health spa
309 facility, if the health spa only offers access to a health spa service at the health spa facility
310 through:

311 (a) the purchase of an individual class or session;

312 (b) the purchase of a package:

313 (i) with a defined number of classes or sessions; and

314 (ii) for which the health spa may not hold more than \$150 worth of a consumer's
315 unused credit;

316 (c) the purchase of a monthly membership or pass, payment for which the health spa
317 does not collect from a consumer more than two months in advance;

318 (d) an installment contract that:

319 (i) provides for the consumer to make all payments due under the contract, including a
320 down payment, an enrollment fee, a membership fee, or any other payment to the health spa, in
321 equal monthly installments spread over the entire term of the contract; and

322 (ii) contains the following clause: "If this health spa ceases operations at or changes the
323 consumer's primary location in violation of Utah Code Subsection 13-23-3(7) [~~or~~], (8), or (9),
324 no further payments under this contract shall be due to anyone, including any assignee of the
325 contract or purchaser of any note associated with or contained in this contract."; or

326 (e) a combination of health spa services described in Subsections (1)(a) through (d).

327 (2) For purposes of finding the principal amount for the bond, letter of credit, or
328 certificate of deposit required under Section 13-23-5, a health spa is not required to include in
329 the calculation described in Subsection 13-23-5(3) a contract that offers access to a health spa
330 service as described in Subsection (1).

331 [~~(2)~~] (3) A health spa that claims exemption from Subsections 13-23-5(2) through (5)
332 or that a contract should be excluded from the calculation described in Subsection 13-23-5(3)
333 bears the burden of proving to the division that the health spa or contract meets the
334 [exemption] relevant criteria described in Subsection (1) or (2).

335 Section 5. Section 13-23-8 is amended to read:

336 **13-23-8. Grounds for denial, suspension, or revocation.**

337 The director may, in accordance with Title 63G, Chapter 4, Administrative Procedures
338 Act, issue an order to deny, suspend, or revoke an application or registration upon a finding
339 that the order is in the public interest and that:

340 (1) the application for registration or renewal is incomplete or misleading in a material
341 respect;

342 (2) the applicant or person registered under this chapter or an officer, director, agent, or
343 employee of the applicant or registrant has:

344 (a) violated this chapter;

345 (b) violated Chapter 11, Utah Consumer Sales Practices Act;

346 (c) been enjoined by a court, or is the subject of an administrative order issued in this
347 or another state, if the injunction or order:

348 (i) includes a finding or admission of fraud, breach of fiduciary duty, or material
349 misrepresentation; or

350 (ii) is based on a finding of lack of integrity, truthfulness, or mental competence of the
351 applicant;

352 (d) obtained or attempted to obtain a registration by misrepresentation;

353 (e) failed to timely provide the division with any information required by this chapter;

354 or

355 (f) failed to pay a fine imposed by the division;

356 (3) the applicant's or registrant's bond, letter of credit, or certificate of deposit ceases to
357 be in effect;

358 (4) the applicant or registrant requested an exemption from maintaining a bond, letter
359 of credit, or certificate of deposit under Section 13-23-6, but does not meet the requirements
360 for exemption; [or]

361 (5) the applicant or registrant excluded from the principal amount calculation described
362 in Subsection 13-23-5(3) for a bond, letter of credit, or certificate of deposit, a contract that did

363 not meet the requirements for exclusion described in Section 13-23-6; or
364 ~~[(5)] (6)~~ the applicant or registrant ceases to provide health spa services.
365 Section 6. Section **63I-2-213** is amended to read:
366 **63I-2-213. Repeal dates -- Title 13.**
367 ~~[(1) On July 1, 2022:]~~
368 ~~[(a) Subsection 13-23-3(7)(a) is repealed and replaced with the following:]~~
369 ~~["(a) Except as permitted under Subsection (7)(b), a health spa may not assign a~~
370 ~~contract for a health spa service unless the health spa:]~~
371 ~~[(i) provides the consumer the option to cancel the contract; and]~~
372 ~~[(ii) receives approval from the consumer to assign the contract."; and]~~
373 ~~[(b) Subsection 13-23-3(8)(a) is repealed and replaced with the following:]~~
374 ~~["(a) Except as permitted under Subsection (8)(b), before a health spa changes a~~
375 ~~consumer's primary location, the health spa shall provide the consumer the option to:]~~
376 ~~[(i) cancel the contract for a health spa service; or]~~
377 ~~[(ii) (A) continue the contract at the new health spa facility; and]~~
378 ~~[(B) designate the new health spa facility as the consumer's primary location."]~~
379 ~~[(2)]~~ Title 13, Chapter 47, Private Employer Verification Act, is repealed on the
380 program start date, as defined in Section **63G-12-102**.